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National Association of Regulatory Utility Commissioners

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FEB 14 2003

Federal Communications Commission
Office of Secretary

Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-8B115
Washington, DC 20554

**Re: NOTICE OF ORAL AND WRITTEN EX PARTE IN THE PROCEEDING
CAPTIONED: Triennial Review of the Section 251 Unbundling Obligations of
Incumbent Local Exchange Carriers, CC Docket No. 01-338; CC Docket No.
96 - 98; and CC Docket No. 98-147**

Dear Secretary:

This notice of ex parte contacts is meant to cover written comments, oral, and email comments to FCC Commissioner's offices. Except where otherwise noted, all these contacts occurred yesterday, February 13, 2003 before Sunshine notice was released. For the other contacts, NARUC respectfully requests any waivers needed to make that aspect of this filing out-of-time.

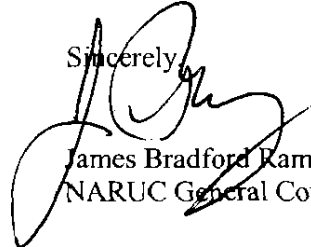
A. NARUC President David Svando met separately with **FCC Commissioners Copps, Adelstein, Abernathy, and Martin**. He also met with Chairman Powell's advisor **Chris Libertelli**. During the course of these meetings, President Svanda made the following points:

- (1) The principles filed last Friday were signed by all members of the NARUC leadership as well as the leadership of the NARUC Committee on Telecommunications. It has the support of the vast majority of state commissions and individual commissioners that have taken a position.
- (2) The proposal most accurately reflects the federal-State partnership (and granular analysis) envisioned by the 1996 Act, the D.C. Circuit's remand, and the recent history of FCC and State cooperation.
- (3) The NARUC proposal also sets the stage for future collaborations among all parties, while maintaining the critically important on-going federal-state partnership.
- (4) The NARUC proposal respects the natural development of competitive markets and establishes a process framework for the future.
- (5) The proposal also offers the best chance for limiting the cycle of litigation and providing the certainty desired by investors, customers, providers and elected officials.
- (6) NARUC's proposal has garnered the support of other State and Local governmental entities, as well as **AARP**, **CU**, and **NASUCA** and other consumer oriented groups.

- E. **California Commissioner Loretta Lynch** talked To **Commissioner Adelstein** And Separately With **Lisa Zaina** of Commissioner Adelstein's staff - she "fully supported the NARUC ex parte filing last week and underscored the importance of preserving competitor access to broadband facilities." She also mentioned that SBC is talking about buying DirecTV, which she used to argue that the ILECs intend to buy, rather than build. Lisa asked for press articles about SBC.
- C. **WYOMING COMMISSION** - "Last week before "sunshine" **Commissioners Ellenbecker and Furtney** each sent the attached documents with a short cover letter to the FCC Commissioners and Staff as listed on your email. One document contains our comments on the Triennial Review and SUPPORT OF THE NARUC POSITION and the other is the letter on UNE-P we sent to our congressional delegation last fall. This week Commissioner Lee also sent the two attachments to each of the FCC email addresses. Wyoming is one state that would be negatively impacted by preemption and "national" standards and lists." [See attachments.]
- D. **South Dakota Commissioner Sahr** called both **Commissioners Adelstein and Martin** and left messages expressing the support of the South Dakota PUC for NARUC's position. He left the messages at 2:20 (Adelstein) and 2:30 p.m. (Martin)."
- E. **Nebraska PSC Commissioner Anne Boyle** wrote the attached letter to Commissioner Adelstein in support of NARUC's position. [See Attachments].

If you have any questions please feel free to contact me at 202-898-2207 or at jramsay@naruc.org.

Sincerely,



James Bradford Ramsay
NARUC General Counsel

Wyoming PSC Comments on the Tri Re

Wyoming is one rural, geographically large, low population density state where it would make more sense to have the incumbents prove that access to UNEs is unimpaired rather than burden CLECs with a showing that there is impairment. Therefore we believe that a granular analysis will support a finding that competition is severely impaired without broad access to incumbent facilities via UNEs and UNE-P.

We have one of the highest percentages for competitive service provisioning via UNE-P. At this time, 98% of the CLEC customers in Wyoming are served through UNE-P. None of the major CLECs have yet chosen to place a switch in Wyoming. Through the recent section 271 proceeding in Wyoming and through a recent TELRIC pricing proceeding for Qwest in Wyoming, evidence was presented on how unique the telecommunications market in Wyoming really is. For rural states like Wyoming, the strong presumption logically should be that UNEs remain on the impairment list at this time. This issue is a good example of where any national pronouncements or standards cannot and should not apply. It is appropriate the burden at this time should be on taking UNEs off the impairment list, not in adding UNEs to the impairment list.

If the FCC shifts the burden to CLECs to make the showing that their competitive service offerings are burdened by lack of access to UNEs and UNE-P it is doubtful that existing CLECs will have the financial capability or interest to even pursue a proceeding in Wyoming. Wyoming is likely not a very high priority target for the investments required for facilities based competition, especially in the currently depressed telecomm market. This in spite of the fact that we may have one of the most competitive frameworks in place due to our 1995 Wyoming Telecommunications Act which has caused most cross subsidies between services to be removed for the vast majority of Wyoming markets.

The FCC should not preempt the states on these important issues. This is an area where strong support for a state role is warranted and necessary. A strong state role is not inconsistent with developing and maintaining facilities-based local competition. Finally, we support the NARUC principles presented to you today on this important decision.

September 25, 2002

Senator Craig Thomas
109 Hart Senate Office Building
Washington, D. C. 205 10

Senator Mike Enzi
290 Russell Senate Office Building
Washington, D. C. 20510

Representative Barbara Cubin
1114 Longworth House Office Building
Washington, D. C. 20515-5001

Dear Senators Thomas and Enzi and Representative Cubin:

There have recently been intense lobbying efforts by telecommunications companies urging you to preemptively do away with UNE-P (Unbundled Network Elements-Platform) through federal legislation. Because UNE-P has proven to be valuable in **the** development of competitive local telephone service markets in Wyoming, we recommend that you take a very cautious approach to this subject and not act quickly.

UNE-P is a combining of telecommunications network elements that constitute local exchange service; and it is well suited to support competitive entry for a broad range **of** customers and over large geographic areas -- particularly rural areas. **An** August 2002 study shows that Wyoming ranked fifth in the nation in the percentage share of local access lines (at 11.5% of all Wyoming lines) that competitors had gained through the use of UNE-P.

UNE-P has become the principal driver in recent competitive growth in the local exchange market throughout the United States, offering what is seen by many as the best transitional method for new competitors to use to establish a viable customer base. Successful use of UNE-P based market entry gives incentives to competitors to eventually construct their own networks.

Although criticism has been leveled at the pricing of UNE-P, we have conducted extensive, contested case total element long run incremental cost (TELRIC) proceedings with Qwest; and we believe that the TELRIC standards used in setting the rates for Unbundled Network Elements (UNEs), interconnection and collocation are appropriate. Qwest has accepted the results of the Wyoming TELRIC proceedings.

Although there has been argument by Regional Bell Operating Companies that TELRIC pricing for UNE-P is flawed or unfair, TELRIC has gone through substantial legislative and judicial review. For example, a recent United States Supreme Court decision upheld the forward-looking TELRIC methodology as the standard established by the FCC. TELRIC standards, as a matter of law, provide Qwest and the other RBOCs the ability *to recover forward-looking costs*, including joint and common costs plus a reasonable profit.

The FCC and the Wyoming PSC have both expended considerable effort and resources implementing the competitive provisions of the federal Telecommunications Act of 1996 **and** the Wyoming Telecommunications Act of 1995. The results of these combined efforts are being

realized in growing competitive entry into Wyoming's local markets. Now is not the time to slow or stop this progress. With FCC reconsideration of Qwest's application for Section 271 approval for entry into long distance markets in Wyoming and throughout the west imminent, now is not the time to alter the standards and procedures currently in place to provide for fair methods of entry of other companies into Qwest's local markets. UNE-P should be examined carefully and not simply abolished.

The FCC is currently conducting its Triennial Review of UNEs, and this is the appropriate forum for a review and analysis of this situation and to advance the debate over UNE-P. We understand that Senator Daschle may be preparing an initiative which might have the effect of doing away with UNE-P. We urge you to oppose this initiative in favor of a more deliberate examination of the value of UNE-P in the emergence of competitive telecommunications markets in Wyoming and throughout the United States.

Sincerely,

STEVE ELLENBECKER
Chairman

STEVE FURTNEY
Deputy Chair

KRISTIN H. LEE
Commissioner

xc: Governor Jim Geringer
Margaret Spearman
Michael Stull

Nebraska Public Service Commission

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February 14, 2003

Commissioner Jonathan Adelstein
Federal Communications Commission
Washington, DC 20554

RE: CC Docket 01-338, 96-98, 98-147

Dear Commissioner Adelstein:

Before sunshine sets once again on the above dockets, I am making an eleventh hour request to encourage you to allow the states needed jurisdiction over UNE-P's. Never in the past have states and the FCC had a greater need for a complementary working relationship than they have now. The Telecom Act of 1996 brought about our strong working partnership. This is not the time to take a step away and harness states with "one size fits all" policies.

The argument is now being made that the states are unable to handle such a task. Don't believe it. We have more than proven ourselves.

On my own behalf, I am personally offended by the actions of Congressman Billy Tauzin who has now injected partisan politics into the debate. I am the lone Democrat on a five-member Commission. Partisanship has never entered any of our discussions.

I would greatly appreciate your continued support of state involvement. The public interest is not served by too quickly removing procedures that have opened competition when competition has not yet fully matured.

Sincerely,

Anne Boyle, Chair

PS: Enclosed is a copy of an editorial that was sent to the Omaha World-Herald and the Lincoln Journal on behalf of the Nebraska Public Service Commission regarding this matter.

Nebraska Public Service Commission

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February 13, 2003

The Nebraska Public Service Commission closely monitors developments at the Federal Communications Commission (FCC). The FCC is currently considering the fate of the Telecommunications Act of 1996, which FCC Chairman Michael Powell appears to question. At issue: The elimination of the statutes and rules that require Bell Operator Companies, including Qwest, to lease their networks to competitors. At stake: A return to telephone monopolies – This time with no state oversight.

On behalf of the Nebraska Commission, I call upon the FCC to continue full enforcement of the 1996 Telecommunications Act. Though imperfect, the '96 Act has at least begun the process of bringing greater competition to the telecommunications industry in Nebraska; it would be terribly shortsighted to prematurely terminate that process.

The vision of the 1996 Telecommunications Act and the Nebraska Commission have always been to give the public choices in selecting a local phone company similar to the selection of a long distance service provider. We continue to support what has been proven the most viable wholesale mechanism for competitors to gain entry into those local markets – unbundled network element platform (UNE-P). That means that former Bell monopolies must allow competitors to lease portions of the local network in order to compete for customers. This competitive access is required because the network was built by all of us under the Bell monopoly, with rates paid by customers who had no other phone choice, and included a government guaranteed rate of return. Competitive access is nothing more than a return on this public investment.

Also at risk before the FCC is the vital partnership between the federal government and each state in bringing forth greater competition and new technologies. Nebraska must not be pre-empted from supervising and influencing competitive behavior in our state in such a vital area that will significantly impact development.

In working closely with the Nebraska congressional delegation, and in conferring with the members of the FCC, this Commission has repeatedly emphasized the importance of continued state authority and involvement for state commissions.

Consider what has worked. Long distance is a *proven* model of wholesale access creating better choices for customers. In 1984, the AT&T monopoly was broken up. As part of that divestiture, AT&T – as a “dominant carrier” – was forced to give competitors wholesale access to the national long distance network. Upstarts like Sprint and MCI were among the first to begin “reselling” long distance service by purchasing blocks of network capacity at drastically discounted rates mandated by the court.

A foothold in market share allowed these newcomers to begin investing in elements of their own networks, reducing their reliance upon resale or leased access. As consumers took advantage of new choices and discounts, the upstarts gained ground. Soon they were able to attract market capital, resulting in greater investment. By 1987, Sprint's "Pin Drop" ad touted its investment in fiber optic technology, which generated even more investment. Today, we have some 500 providers of long distance service offering rates over 80 percent lower than the pre-competition long distance era.

Even today, there is no single, proprietary long distance network. Companies fight for retail customers, but they also collect revenue on the wholesale side by providing interconnecting services to other providers. The net result is called "effective competition," as consumers reap the benefits of numerous choices in plans and rates.

The '96 Act laid out a similar model for local residential telephone service, and it will work if given time. Why local telephone markets have failed to diversify in the same manner, as long distance is the subject of much dispute. What cannot be disputed is that other than the Omaha area, most Nebraska consumers still have no meaningful choice among local residential service providers. In other states, some 10 million residential and small business customers now benefit from UNE-P competition, Nebraskans should not be short-changed.

Qwest recently received approval to resume selling long distance service through many of its 14 states, including Nebraska. The '96 Act contemplated that approval, as long as local markets were open to competitors. Nebraskans are already aware of Qwest's new service offerings, and as a "dominant carrier," Qwest will potentially win many long distance customers from its local customer base in short order.

The irony is that Qwest will do so largely by leasing access on other companies' long distance networks at discounted wholesale rates, and then "reselling the service to their Nebraska local service customers. Yet the FCC is contemplating denying that same wholesale access to local phone networks. Now is not the time to abandon a proven model. Now is not the time to close off competition.

If the FCC allows Bell monopolies to cut short the process of closing off the local network to its competitors, the battle is all but lost. Preserving Nebraska's right to control its own telecommunications future is vital.

Anne Boyle, Chair
Nebraska Public Service Commission